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Supreme Court of the United States

OCTOBER TERM 1952

No. 280

JAMES T. HOBBS, *Petitioner*,

v.

BEULAH E. HOBBS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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28 U.S.C., Section 1254 1

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

To the Honorable the Chief Justice and The Associate Justices of the Supreme Court of the United States:

The petitioner, James T. Hobbs, respectfully prays for the issuance of a Writ of Certiorari to review the judgment below.

Jurisdiction.

The Jurisdiction of this Court is invoked under the provisions of 28 U.S.C., Section 1254, as amended September 1, 1948.

Opinions Below.

The opinion of the United States District Court for the District of Columbia is unreported but may be found at R. 16. The opinion of the United States Court of Appeals for the District of Columbia Circuit appears in the record at R. 19, 20, 21, and was issued June 5, 1952.

Question Presented.

Respondent sought to have Petitioner's Nevada Divorce decree declared invalid by the United States District Court for the District of Columbia in order to secure a maintenance order under Section 415 of Title 16 of the District of Columbia Code in lieu of the maintenance order previously entered by the Nevada Court. Petitioner's defense to this action was that the judgment of the Nevada Court was entitled to full faith and credit in the District of Columbia Court, and that the decree could not be collaterally attacked in the District of Columbia by the Respondent because she had participated in the Nevada proceedings by entering her Appearance, waiving all time to demur, answer, or otherwise plead and consenting to the entry of her default after having had benefit of Counsel of her own choice and initiating the property settlement. The District Court found that the Nevada decree was not entitled to full faith and credit in which conclusion the United States Court of Appeals for the District of Columbia concurred. The question presented is whether the court below has not violated the Full faith and Credit Clause of the Federal Constitution by refusing to render full faith and credit to the Judicial Proceedings of the Nevada Court and in allowing the Respondent to collaterally attack the Nevada decree after having entered her appearance in the Nevada proceedings, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default and initiating the property settlement which was incorporated into the Nevada Decree.

Statement of the Case.

Petitioner and Respondent were lawfully married December 18, 1912, in Danville, Virginia, and subsequently lived together as man and wife in the District of Columbia, until on or about October 16, 1949, at which time they entered into a separation agreement and property settlement. (R. 10, 11, 12) This separation agreement and property settlement was initiated by Respondent and drawn by Counsel for Respondent. Appellant then established his residence in Nevada and otherwise complied in every respect with the legal procedure required by the sovereign state of Nevada. On December 5, 1949, Petitioner was awarded a decree of absolute divorce from Respondent by the Second Judicial District Court of the State of Nevada (R. 8, 9, 10) The separation agreement and property settlement which had been entered into by the parties was incorporated into the Nevada decree, and in accordance therewith, the Nevada Court ordered Petitioner to pay Respondent as maintenance the sum of Eighty Dollars ($80.00) per month. In addition to the initiation of the separation agreement and property settlement, Respondent further participated in the Nevada proceedings by entering her Appearance, waiving all time to demur, answer, or otherwise plead, and consenting to the entry of her default. (R. 12, 13) This Appearance and Waiver became a part of the pleadings and record in the Nevada proceedings. On December 12, 1949, Appellant remarried. Notwithstanding the fact that the Nevada Court had ordered Petitioner to contribute to the maintenance of Respondent in the amount of $80.00 per month and in spite of the fact that the parties were no longer man and wife, Respondent instituted in the District Court of the United States for the District of Columbia on February 6, 1950, an action for maintenance and support alleging that she was still the lawful wife of Appellant. Appellant moved to dismiss the Complaint on the grounds that the parties were not man and wife and further that the matter was

res adjudicata by virtue of the Nevada proceedings to which the District of Columbia Court must give full faith and credit. The Motion was denied and upon the trial of the case, the District of Columbia Court concluded that the Nevada divorce decree was null and void, and that therefore the parties were man and wife and the District of Columbia Court had jurisdiction to enter a maintenance order. The District of Columbia Court then ordered Petitioner to pay Respondent the same amount ($80.00) for maintenance as the Nevada Court had previously ordered. The United States Court of Appeals affirmed the decision of the District Court and held that the Nevada divorce decree was not entitled to full faith and credit and that the Respondent had not performed the acts necessary to estop her from challenging the legality of the divorce.

Reasons for Allowance of the Writ.

To the extent that prior holdings of this court are applicable, the decision of the court below seems to be in conflict with the decisions of this Court. To the extent that this case is distinguished from those holdings there is presented here a federal question of substance not heretofore determined by this Court.

Beginning with the case of *Davis* v. *Davis* (305 U. S. 32, 40) in 1938 and extending the doctrine in the cases of *Sherrer* v. *Sherrer* (334 U. S. 343) and *Coe* v. *Coe* (334 U. S. 378) decided June 7, 1948, this court has held that participation by the Defendant in a divorce proceeding bars collateral attack of that divorce decree by that Defendant in a subsequent proceeding in the courts of a sister state by virtue of the Full Faith and Credit clause of the Federal Constitution. This doctrine was applied in *Johnson* v. *Muelberger* (340 U. S. 581 (1951)) and most recently in *Cook* v. *Cook* (72 Sup. Ct. 157) (1951) where the perimeter of the doctrine was again extended.

The Court below erred in ignoring Respondent's participation in the Nevada proceedings and in allowing Respond-

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ent to collaterally attack the Nevada decree. Respondent initiated the property settlement which was drawn by Respondent's Counsel and which included a provision for permanent maintenance. Respondent further participated by entering her appearance in the Nevada proceedings and waiving notice and consenting to the entry of her default. With this knowledge and benefit of Counsel, Respondent clearly waived her opportunity to litigate the jurisdictional facts. Petitioner, on the other hand, relied in good faith upon the acts of participation of the Respondent even to the extent of remarriage. Petitioner has complied with every requirement of law of the sovereign state of Nevada and yet finds himself in the anomalous predicament of being married and yet unmarried to two spouses at the same time. To the extent that the Respondent participated in the Nevada proceedings the decision of the lower Court is in conflict with the holdings of this court in the *Davis, Coe, Sherrer, Johnson* and *Cook* cases.

To the extent that Respondent participated in the Nevada proceedings by signing an Appearance and Waiver this case differs from the applicable prior decisions where the participation was of a different nature. Thus there is presented here a novel federal question of substance not heretofore determined by this Court. This question is important because it vitally affects the large number of persons who have been awarded divorce decrees in states other than the state of residence of their spouse.

The Federal question presented herein was properly raised below and warrants this Court's issuance of the writ.

Conclusion.

It is submitted that the present petition should be granted and the judgment below reversed.

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